

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FELICITA BURGOS,

Plaintiff,

v.

Case No. 6:17-cv-623-Orl-37MCR

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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**ORDER**

After filing a Complaint in this Court, the Commissioner of Social Security (“**Commissioner**”) issued a decision finding Plaintiff disabled since April 3, 2013. (Doc. 29-2.) Pursuant to 42 U.S.C. § 406(b), the Commissioner withheld \$29,721.25 from Plaintiff’s past-due benefits for the possible payment of attorney’s fees. (Docs. 29-3; 30.) Plaintiff’s counsel now seeks an award of \$19,721.12 pursuant to the contingent fee contract with Plaintiff. (Doc. 29 (“**Motion**”).) Upon receipt of payment, Plaintiff’s counsel shall refund \$3,703.24 to Ms. Burgos that was received pursuant to the Equal Access to Justice Act (“**EAJA**”), 28 U.S.C. § 2412(d). (*Id.* at 1-2; *see also* Docs. 26-28.) The Motion is unopposed. (Doc. 29-8.) On referral, United States Magistrate Judge Monte C. Richardson recommends the Court grant the Motion. (Doc. 30 (“**R&R**”).)

No party objected to the R&R, and the time for doing so has now passed. Absent objections, the Court has examined the R&R only for clear error. *See Wiand v. Wells Fargo Bank, N.A.*, No. 8:12-cv-557-T-27EAJ, 2016 WL 355490, at \*1 (M.D. Fla. Jan. 28, 2016); *see*

*also Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). In doing so, the Court takes issue with only one portion of the R&R – Magistrate Judge Richardson's recommendation the Court direct the Clerk to enter judgment accordingly. (Doc. 30, p. 6.) Judgment has already been entered in this case. (*See* Doc. 25; *see also* Doc. 29-3, pp. 4-5.) Accordingly, the Court will merely direct the Commissioner to pay to Plaintiff's counsel the requested attorney's fees. In the absence of any other clear error, the balance of the R&R is due to be adopted.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. U.S. Magistrate Judge Monte C. Richardson's Report and Recommendation (Doc. 30) is **ADOPTED IN PART** and **REJECTED IN PART**:
  - a. The recommendation that the Clerk of the Court be directed to enter judgment accordingly is **REJECTED**.
  - b. In all other respects, the R&R is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. Plaintiff Felicita Burgos's Motion for Attorney's Fees Pursuant to the Social Security Act Section 206(b)(1) and U.S.C. § 406(b)(1) (Doc. 29) is **GRANTED**.
  - a. The Commissioner is **DIRECTED** to pay to Plaintiff's counsel the sum of \$19,721.12 for § 406(b) fees out of Plaintiff's past-due benefits.
  - b. Plaintiff's counsel is **DIRECTED** to refund the EAJA award of \$3,703.34 to Plaintiff upon receipt of the § 406(b) fees.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on December 6, 2019.



  
ROY B. DALTON JR.  
United States District Judge

Copies to:  
Counsel of Record